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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 HOWARD STEELE, as the Personal
10 Representative for the Estate of Lee Ann Steele,
11 JANETTE GRIEB, a single person, and
12 SHARON GUNDERSON, aka SHARON
13 PRIEBE,

14 Plaintiffs,

15 v.

16 EXTENDICARE HEALTH SERVICES, INC.;
17 EXTENDICARE HOMES, INC.; and FIR LANE
18 TERRACE CONVALESCENT CENTER, INC.,

19 Defendants.

CASE NO. C08-1332-JCC

ORDER

20 This matter comes before the Court on Plaintiff Steele's Motion for Voluntary Dismissal and
21 Response to Defendants' Motion for Summary Judgment (Dkt. No. 77) and Defendants' Response
22 thereto (Dkt. No. 82). The Court has carefully considered these papers and the balance of pertinent
23 materials in the case file and has determined that oral argument is not necessary. The Court hereby finds
24 and rules as follows.

25 On January 29, 2009, Defendants filed a motion for summary judgment against Plaintiff Steele.
26 (Dkt. No. 74.) Before his response was due, Plaintiff Steele filed a motion for voluntary dismissal
pursuant to Federal Rule of Civil Procedure 41(a)(2). Defendants do not oppose the dismissal, so long as
the dismissal is *with prejudice*, given that Plaintiff did not substantively oppose the pending motion for

1 summary judgment with respect to Mr. Steele. (Resp. 6 (Dkt. No. 82 at 7).)

2 The Federal Rules of Civil Procedure require a court order, “on terms that the court considers
3 proper,” for the dismissal of an action after the opposing party has filed a motion for summary
4 judgment. FED. R. CIV. P. 41(a)(2). “Unless the order states otherwise, a dismissal under this paragraph
5 (2) is without prejudice.” *Id.* “When ruling on a motion to dismiss without prejudice, the district court
6 must determine whether the defendant will suffer some plain legal prejudice as a result of the dismissal.”
7 *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996).

8 The Court finds that it is proper to dismiss Plaintiff Steele from this case with prejudice.
9 Defendants have incurred a substantial expense in defending the action against Plaintiff Steele,
10 including the cost of deposing him and preparing and filing a motion for summary judgment against him
11 and would therefore be prejudiced by a dismissal without prejudice. Plaintiff Steele failed to
12 substantively oppose the pending summary judgment motion against him and would likely have been
13 dismissed on the merits if the Court had ruled on the summary judgment motion. Accordingly, the Court
14 hereby GRANTS Plaintiff Steele’s Motion for Voluntary Dismissal (Dkt. No. 77) and ORDERS that:

- 15 (1) Plaintiff Steele is dismissed from this action with prejudice, and
16 (2) Defendants’ summary judgment motion against Plaintiff Steele (Dkt. No.
17 74) is DENIED as MOOT.

18 SO ORDERED this 24th day of February, 2009.

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22 John C. Coughenour
23 UNITED STATES DISTRICT JUDGE
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